

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

PALISADES COLLECTIONS, LLC,	§	
	§	CIVIL ACTION NO. _____
v.	§	
	§	JURY DEMANDED
WILLIAM E. WALTON AND	§	
BUSH & RAMIREZ, PLLC		

DEFENDANTS' NOTICE OF REMOVAL

Defendants Bush & Ramirez, PLLC ("Bush & Ramirez") and William E. Walton ("Walton") jointly file this Notice of Removal pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 as follows:

I. NATURE OF THE SUIT

1. This lawsuit arises from a legal malpractice claim asserted in Dallas County by Palisades Collections, LLC ("Palisades") against Defendants in connection with Defendants' legal representation of Plaintiff in a related underlying suit, styled DC-11-14916, *Santander Consumer USA v. Palisades Collections, LLC*, In the District Court of Dallas County, Texas 134th Judicial District (the "Underlying Suit"). Palisades alleges that as a result of Defendants' negligent representation of Palisades in the Underlying Suit, Palisades' claims exceeding \$2 million were lost. *See generally* Exhibit C.

II. PROCEDURAL BACKGROUND

2. On October 28, 2016, Plaintiff Palisades Collections, LLC filed an Original Petition initiating an action in the 68th Judicial District Court of Dallas County, Texas, bearing Cause No. DC-16-14039 ("the State Court Action"). *See* Exhibit C. A jury demand was made in the State Court Action. *See* Exhibit C at 5.

3. No answer was filed in the State Court Action. This Notice of Removal is being filed prior to Defendants' State Court answer deadline of Monday, November 28, 2016.

4. This Notice of Removal is timely filed within the 30-day statutory time period for removal under 28 U.S.C. § 1446(b)(1), being filed within 30 days of Defendants' receipt of formal service of process (as to Walton, *see* Exhibit F) and informal service via email by agreement (as to Bush & Ramirez, *see* Exhibit G) on November 4, 2016.

5. This Notice of Removal is also timely filed within one year after commencement of the State Court Action, in compliance with 28 U.S.C. § 1446(c)(1).

III. BASIS FOR REMOVAL

6. This Court has original diversity jurisdiction under 28 U.S.C. § 1332 over this civil action, and the action may be removed by Defendants pursuant to 28 U.S.C. § 1441(b), as it is a civil action between citizens of different states, and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

7. According to Palisades' state court pleadings, Palisades alleges it is a citizen of the state of Texas because it has its principal place of business in Travis County, Texas. *See* Exhibit C at 1. However, in the Underlying Suit, Palisades' corporate representative, Stephen Braun, testified to the contrary on December 12, 2012, that Palisades has *no* offices other than its New Jersey office. *See* Exhibit H. Additionally, in an unrelated suit, Palisades sought to transfer venue out of the Western District of Texas. In support of that motion, Mr. Braun also testified in a sworn declaration attached to Palisades' Motion to Dismiss or Transfer Venue that Palisades does not do business in Texas, has no offices in Texas, and specifically denied having an office in Austin, Texas. *See* Exhibit I.

8. Because Palisades has asserted to several other courts that it in fact has no offices in Texas, this Court should pierce the pleadings¹ and find based on the available evidence, consisting of the sworn testimony of Palisades' corporate representative, that Palisades is not a citizen of Texas for purposes of diversity jurisdiction because not only does it not have its principal place of business in Texas it does not do business in Texas and its principal place of business is in New Jersey, where it maintains its only office, and where it is also incorporated by its own admission.

9. Defendant Bush & Ramirez is incorporated under the laws of Texas and maintains its principal place of business in Texas, and thus is a citizen of Texas for purposes of diversity jurisdiction. Defendant Walton is a natural person who is a citizen of the state of Texas.

10. Because Plaintiff is a citizen of New Jersey and both Defendants are citizens of Texas, complete diversity of citizenship exists among the parties.

11. Plaintiff's Original Petition pleads damages "in excess \$1 million." *See* Exhibit C at 4. Based on upon Palisades' pleaded damages of over \$1 million, the amount in controversy plainly exceeds \$75,000, exclusive of interest and costs. Because the amount in controversy exceeds \$75,000, this Court has subject matter jurisdiction under 28 U.S.C. § 1332, and this removal is proper.

12. Removal to the Northern District of Texas, Dallas Division is proper because the state court action is pending in Dallas County, which is part of the Dallas Division.

¹ *See, e.g., Asher v. A.G. Edwards & Sons, Inc.*, 272 Fed. Appx. 357, 359 (5th Cir. 2008) (noting court has authority to pierce the pleadings in appropriate circumstances to preserve its jurisdiction); *Grassi v. Ciba-Geigy, Ltd.*, 894 F.2d 181, 185 (5th Cir.1990) ("[J]urisdictional rules may not be used to perpetrate a fraud or ill-practice upon the court by either improperly creating or destroying diversity jurisdiction. Were that to occur, we would not elevate form over substance but would accomplish whatever piercing and adjustments considered necessary to protect the court's jurisdiction." (internal quotation marks and citation omitted)); *see also Vaillancourt v. PNC Bank, Nat. Ass'n*, 771 F.3d 843, 847 (5th Cir. 2014) (holding in an improper joinder case that if the plaintiff has omitted or misstated discrete facts, the court may pierce the pleadings and conduct a summary inquiry).

13. In compliance with Local Rule 81.1(a)(4), Defendants attach to this Notice of Removal: (a) an index of all attached documents, and (b) a copy of the state court docket sheet. *See Exhibits A-B.*

14. In compliance with 28 U.S.C. § 1446(a) and Local Rule 81.1(a)(4), Defendants also attach to this Notice of Removal: (a) the state court docket sheet, (b) all service of process on Defendants, (c) all documents filed in the state court, and (d) all orders issued by the state court. *See Exhibits C-F.*

15. In compliance with 28 U.S.C. § 1446(d), Defendants hereby certify that they will promptly notify the clerk of the court in the State Court Action and all adverse parties of this removal.

16. In compliance with Local Rule 81.1, Defendants are simultaneously filing a separately signed Corporate Disclosure which complies with FED. R. CIV. P. 7.1 and Local Rule 3.1.

IV. CONCLUSION AND PRAYER

17. The basis for this removal and this Court's jurisdiction is diversity of citizenship under 28 U.S.C. §1332 because available evidence establishes that Plaintiff is a citizen of New Jersey and all Defendants are citizens of Texas. The amount in controversy, based on the pleadings, exceeds \$75,000, exclusive of interest and costs. As such, this removal is proper under 28 U.S.C. §1441. On these grounds, Defendants hereby remove the referenced State Court Action to this Court.

18. Defendants demand a jury in this removed action.

19. THEREFORE, Defendants Bush & Ramirez, PLLC and William Walton respectfully request that the above-entitled action be removed from the 68th Judicial District

Court of Dallas County, Texas to the United States District Court for the Northern District of Texas, Dallas Division.

Respectfully submitted,

MARTIN, DISIERE, JEFFERSON & WISDOM, L.L.P.

/s/ Dale Jefferson

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **Defendants' Notice of Removal** was served this 28th day of November, 2016 on the following counsel of record by the method specified:

JOHNSTON TOBEY BARUCH, P.C. Randy Johnston Coyt Johnston Robert Tobey Chad Baruch	<i>Via CMRRR 70141200000078319643 and Email:</i> <i>randy@jtlaw.com</i> <i>coyt@jtlaw.com</i> <i>robert@jtlaw.com</i> <i>chad@jtlaw.com</i>
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/s/ *Barrie J. Beer*
Barrie J. Beer